

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

No. 2:16-cv-00290-WJ-KRS

2:10-cr-02138-WJ-2

v.

TOMMY PENA,

Defendant/Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition (PFRD), filed January 12, 2018. (CV Doc. 31; CR Doc. 180). The parties were notified that objections were due within fourteen days of service of the PRFD and that if no objections were filed, no appellate review would be allowed. Neither party has filed objections to the PFRD and the time to do so has now passed.

IT IS THEREFORE ORDERED that:

- 1) the PFRD (CV Doc. 31; CR Doc. 180) is adopted as an order of the Court;
- 2) the Motion Under 28 U.S.C. § 2255 and *Johnson v. United States*, 135 S. Ct. 2551 (2015) (CV Docs. 1 & 10; CR Docs. 152 & 160) is granted in part and denied in part as recommended in the PFRD. Movant shall be resentenced without any enhancement under the Armed Career Criminal Act. In all other respects, the motion is denied.
- 3) this case will be set for resentencing in a separate order.



UNITED STATES DISTRICT JUDGE